

SENATE BILL

No. 4

Introduced by Committee on Budget and Fiscal Review

January 27, 2003

An act to amend Section 13260 of, and to add Section 13260.2 to, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 4, as introduced, Committee on Budget and Fiscal Review. Waste discharge fees.

(1) The Porter-Cologne Water Quality Control Act, with certain exceptions, imposes on a person for whom waste discharge requirements have been prescribed, an annual fee established by the State Water Resources Control Board, not to exceed \$20,000, but subject to an annual adjustment, on the basis of total flow, volume, number of animals, threat to water quality, and area involved. Under the act, the fees are deposited in the Waste Discharge Permit Fund, which is expended, upon appropriation, for the purposes of carrying out the act. The act requires all or part of the fees to be refunded if waste discharge requirements are waived. The act makes a person failing to pay a waste discharge fee, if requested to do so by a California regional water quality control board, guilty of a misdemeanor.

This bill, instead, would require each person for whom waste discharge requirements have been prescribed, or for whom a waiver has been granted, to submit an annual fee according to a fee schedule established by the state board. The bill would require the total amount of annual fees to equal that amount necessary to recover costs incurred in connection with the issuance, administration, reviewing, monitoring, and enforcement of waste discharge requirements and waivers of waste

discharge requirements. The bill would require all or part of the annual fees to be refunded if the state board or a regional board determines that the discharge will not affect, or have the potential to affect, the quality of the waters of the state. The bill would delete a provision that exempts certain facilities for confined animal feeding operations from the annual fee requirement. Because failure to pay the annual fee under certain circumstances is a crime, this bill would impose a state-mandated local program by expanding the scope of that crime.

The bill would require the state board to establish a fee in an amount sufficient to recover its costs in reviewing, processing, and enforcing “no exposure” certifications issued to facilities that apply for those certifications in accordance with a general industrial stormwater permit. The bill would require revenue generated pursuant to this provision to be deposited in the Waste Discharge Permit Fund.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13260 of the Water Code is amended to
2 read:

3 13260. (a) All of the following persons shall file with the
4 appropriate regional board a report of the discharge, containing the
5 information which may be required by the regional board:

6 (1) Any person discharging waste, or proposing to discharge
7 waste, within any region that could affect the quality of the waters
8 of the state, other than into a community sewer system.

9 (2) Any person who is a citizen, domiciliary, or political agency
10 or entity of this state discharging waste, or proposing to discharge
11 waste, outside the boundaries of the state in a manner that could
12 affect the quality of the waters of the state within any region.

13 (3) Any person operating, or proposing to construct, an
14 injection well.

(b) No report of waste discharge need be filed pursuant to subdivision (a) if the requirement is waived pursuant to Section 13269.

(c) Every person subject to subdivision (a) shall file with the appropriate regional board a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge.

(d) (1) (A) Each person for whom waste discharge requirements have been prescribed pursuant to Section 13263, *or for whom a waiver has been granted pursuant to Section 13269*, shall submit an annual fee ~~not to exceed twenty thousand dollars (\$20,000)~~, according to a ~~reasonable~~ fee schedule established by the state board. ~~Fees shall be calculated on the basis of total flow, volume, number of animals, threat to water quality, or area involved.~~

(B) The total amount of annual fees collected pursuant to this section shall equal that amount necessary to recover costs incurred in connection with the issuance, administration, reviewing, monitoring, and enforcement of waste discharge requirements and waivers of waste discharge requirements.

(C) Recoverable costs may include, but are not limited to, costs incurred in reviewing waste discharge reports, prescribing terms of waste discharge requirements and monitoring requirements, enforcing and evaluating compliance with waste discharge requirements and waiver requirements, conducting surface water and groundwater monitoring and modeling, analyzing laboratory samples, and reviewing documents prepared for the purpose of regulating the discharge of waste, and administrative costs incurred in connection with carrying out these actions.

(2) (A) Subject to subparagraph (B), any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund which is hereby created. The money in the fund is available for expenditure by the state board, upon appropriation by the Legislature, *solely* for the purposes of carrying out this division.

(B) (i) Notwithstanding subparagraph (A), the fees collected pursuant to this section from stormwater dischargers that are subject to a general industrial or construction stormwater permit under the national pollutant discharge elimination system

1 (NPDES) shall be separately accounted for in the Waste Discharge
2 Permit Fund.

3 (ii) Not less than 50 percent of the money in the Waste
4 Discharge Permit Fund that is separately accounted for pursuant
5 to clause (i) is available, upon appropriation by the Legislature, for
6 expenditure by the regional board with jurisdiction over the
7 permitted industry or construction site that generated the fee to
8 carry out stormwater programs in the region.

9 (iii) Each regional board that receives money pursuant to
10 clause (ii) shall spend not less than 50 percent of that money solely
11 on stormwater inspection and regulatory compliance issues
12 associated with industrial and construction stormwater programs.

13 (3) Any person who would be required to pay the annual fee
14 prescribed by paragraph (1) for waste discharge requirements
15 applicable to discharges of solid waste, as defined in Section
16 40191 of the Public Resources Code, at a waste management unit
17 that is also regulated under Division 30 (commencing with Section
18 40000) of the Public Resources Code, ~~and who is or will be subject~~
19 ~~to the fee imposed pursuant to Section 46801 of the Public~~
20 ~~Resources Code in the same fiscal year~~, shall be entitled to a waiver
21 of the annual fee for the discharge of solid waste at the waste
22 management unit imposed by paragraph (1) upon verification by
23 the state board of payment of the fee imposed by Section 48000 of
24 the Public Resources Code, and provided that the fee established
25 pursuant to Section 48000 of the Public Resources Code generates
26 revenues sufficient to fund the programs specified in Section
27 48004 of the Public Resources Code and the amount appropriated
28 by the Legislature for those purposes is not reduced.

29 ~~(4) The maximum fee amount set forth in paragraph (1) of~~
30 ~~subdivision (d) shall be adjusted annually to reflect increases or~~
31 ~~decreases in the cost of living as measured by the Consumer Price~~
32 ~~Index prepared by the Department of Industrial Relations or a~~
33 ~~successor agency.~~

34 (e) Each report of waste discharge for a new discharge
35 submitted under this section shall be accompanied by a fee equal
36 in amount to the annual fee for the discharge. ~~If waste discharge~~
37 ~~requirements are issued, the fee, which shall serve as the first~~
38 ~~annual fee. If waste discharge requirements are waived pursuant~~
39 ~~to Section 13269 the state board or a regional board determines~~
40 ~~that the discharge will not affect, or have the potential to affect, the~~

quality of the waters of the state, all or part of the *annual* fee shall be refunded.

(f) (1) The state board shall adopt, by emergency regulations, a schedule of fees authorized under ~~subdivisions~~ *subdivision* (d) ~~and (j)~~. The total revenue collected each year through annual fees shall be set at an amount equal to the revenue levels set forth in the Budget Act for this activity. The state board shall automatically adjust the annual fees each fiscal year to conform with the revenue levels set forth in the Budget Act for this activity. If the state board determines that the revenue collected during the preceding year was greater than, or less than, the revenue levels set forth in the Budget Act, the state board may further adjust the annual fees to compensate for the over and under collection of revenue.

(2) The emergency regulations adopted pursuant to this subdivision, any amendment thereto, or subsequent adjustments to the annual fees, shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the state board.

(g) The state board shall adopt regulations setting forth reasonable time limits within which the regional board shall determine the adequacy of a report of waste discharge submitted under this section.

(h) Each report submitted under this section shall be sworn to, or submitted under penalty of perjury.

(i) The regulations adopted by the state board pursuant to subdivision (f) shall include a provision that annual fees shall not be imposed on those who pay fees under the ~~National Pollutant Discharge Elimination System~~ *national pollutant discharge elimination system* until the time when those fees are again due, at which time the fees shall become due on an annual basis.

~~(j) Facilities for confined animal feeding or holding operations, including dairy farms, which have been issued waste discharge requirements or exempted from waste discharge requirements prior to January 1, 1989, are exempt from subdivision (d). If the facility is required to file a report under subdivision (e) after January 1, 1989, the report shall be accompanied by a filing fee, to be established by the state board in accordance with subdivision (f), not to exceed two thousand dollars (\$2,000), and the facility shall be exempt from any annual fee.~~

~~(k) Any person operating or proposing to construct an oil, gas, or geothermal injection well subject to paragraph (3) of subdivision (a), shall not be required to pay a fee pursuant to subdivision (d), if the injection well is regulated by the Division of Oil and Gas of the Department of Conservation, in lieu of the appropriate California regional water quality control board, pursuant to the memorandum of understanding, entered into between the state board and the Department of Conservation on May 19, 1988. This subdivision shall remain operative until the memorandum of understanding is revoked by the state board or the Department of Conservation.~~

~~(l)~~

(k) In addition to the report required by subdivision (a), before any person discharges mining waste, the person shall first submit both of the following to the regional board:

(1) A report on the physical and chemical characteristics of the waste that could affect its potential to cause pollution or contamination. The report shall include the results of all tests required by regulations adopted by the board, any test adopted by the Department of Toxic Substances Control pursuant to Section 25141 of the Health and Safety Code for extractable, persistent, and bioaccumulative toxic substances in a waste or other material, and any other tests that the state board or regional board may require, including, but not limited to, tests needed to determine the acid-generating potential of the mining waste or the extent to which hazardous substances may persist in the waste after disposal.

(2) A report that evaluates the potential of the discharge of the mining waste to produce, over the long term, acid mine drainage, the discharge or leaching of heavy metals, or the release of other hazardous substances.

~~(m)~~

(l) Except upon the written request of the regional board, a report of waste discharge need not be filed pursuant to subdivision (a) or (c) by a user of recycled water that is being supplied by a supplier or distributor of recycled water for whom a master recycling permit has been issued pursuant to Section 13523.1.

SEC. 2. Section 13260.2 is added to the Water Code, to read:

13260.2. (a) The state board shall establish a fee in an amount sufficient to recover its costs in reviewing, processing, and enforcing “no exposure” certifications issued to facilities that apply for those certifications in accordance with a general industrial stormwater permit.

(b) Revenue generated pursuant to this section shall be deposited in the Waste Discharge Permit Fund.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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